

REMARKS

Entry of the foregoing, re-examination and reconsideration of the subject matter identified in caption, as amended, pursuant to and consistent with 37 C.F.R. §1.111, and in light of the remarks which follow, are respectfully requested.

Claim 7 has been rewritten as new claim 20. Further support for claim 20 may be found in the instant specification, at least at page 9, line 21 to page 10, line 3. Claims 8-10 and 13 have been amended to change their dependency to claim 20. In addition, claim 19 has been amended to further improve its form, which does not narrow the scope of the claim. Claim 7 has been canceled without prejudice or disclaimer. Claims 1-6 were previously canceled. No new matter has been added.

Upon entry of the Amendment, claims 8-20 will be all the claims pending in the application.

I. Information Disclosure Statement

Applicant notes that a reference, DE 10207504, cited on a Form PTO-1449 filed with the Third Information Disclosure Statement, is lined through because “No English Copy ” was submitted.

In this regard, MPEP § 609.04(a) states that “If no translation is submitted, the examiner will consider the information in view of the concise explanation and insofar as it is understood on its face ... the requirement for a concise explanation of relevance can be satisfied by submitting an English language version of the search report or action which indicates the degree of relevance found by the foreign office. This may be an explanation of which portion of the reference is particularly relevant, to which claims it applies, or merely an “X”, “Y”, or “A” indication on a search report.”

In the present case, DE 10207504 was cited in a Supplementary European Search Report, which is in English language and a copy of which has been submitted to the U.S. Patent and Trademark Office on May 7, 2009. Therefore, Applicant respectfully submits that the requirement for a concise explanation has been fulfilled with regard to DE 10207504 and the reference should be considered.

Nonetheless, for the Examiner's convenience, Applicant submits herewith an English abstract of DE 10207504 in an Information Disclosure Statement filed concurrently.

II. Response to Rejection under 35 U.S.C. § 102(b)

Claims 7-18 were rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 6,358,495 to Nishihama et al., as evidenced by Encarta® World English Dictionary, North American Edition, © and (P) 2009.

As noted above, claim 7 has been canceled and claims 8-18 are dependent from new claim 20. Applicant respectfully submits that claims 8-18 and 20 are novel and patentable over Nishihama et al., as evidenced by Encarta®, for at least the following reasons.

Independent claim 20 recites a stick type cosmetic comprising at least an extender material and a mesoporous material for binding the extender material as a skeleton, wherein the skeleton is produced by the following process: (a) kneading a blend composition comprising at least the extender material and a raw material for forming the mesoporous material to form as the skeleton the mesoporous material, (b) extrusion-molding the blend composition, and (c) heating the extrusion-molded article by microwave or microwave and ultrasonic cleaning.

In the presently claimed invention, a mesoporous material, which is a binder for binding an extender material, is formed from a raw material (i.e., a precursor) in the presence of the extender material and optionally other components by heating at a low temperature.

Further, the stick type cosmetic in the presently claimed invention is supported with a skeleton of the mesoporous material by which the extender material is bound. Thus, the skeleton comprises the mesoporous material and the extender material en bloc, which can be found by observation under a microscope. Encarta[®] is cited

On the other hand, Nishihama et al. discloses a lipstick comprising mesoporous powder of titanium-silica. The lipstick is produced by cooling and solidifying a mixture in which the mesoporous powder and other ingredients are added to heated waxes and then stirred and dispersed.

In Nishihama et al., the mesoporous powder (the titanium-silica complex) is prepared in advance and then mixed with the other ingredients. Therefore, the mesoporous powder in the lipstick does not form a skeleton by observation under a microscope. As such, Nishihama et al. does not disclose a stick type cosmetic having a skeleton comprising a mesoporous material by which an extender material is bound. Encarta[®] is cited as defining the diameter of a mesopore and thus does not rectify the above noted deficiencies of Nishihama et al.

Further, the present specification demonstrates that the presently claimed invention can provide unexpected results. Specifically, Comparative Example 4 in the present application provides a stick type cosmetic which was prepared in the same manner as the lipstick described in Nishihama et al. As the results in Table 1 of the present specification show, the stick type cosmetic in Comparative Example 4 was inferior in mechanical strength and gave slimy applying feeling, compared to Examples 1-10.

In view of the foregoing, Applicant respectfully submits that claim 20 is patentable over Nishihama et al. and thus the rejection should be withdrawn. Additionally, claims 8-18 depend from claim 20, directly or indirectly, and thus are patentable over the cited reference at least by virtue of their dependency.

III. Conclusion

From the foregoing, further and favorable action in the form of a Notice of Allowance is believed to be next in order and such action is earnestly solicited. If there are any questions concerning this paper or the application in general, the Examiner is invited to telephone the undersigned at his earliest convenience.

Respectfully submitted,

BUCHANAN INGERSOLL & ROONEY PC

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By: _____



Fang Liu

Registration No. 51283

P.O. Box 1404
Alexandria, VA 22313-1404
703 836 6620